

PUBLIC MATTER

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STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
JAYNE KIM, No. 174614
CHIEF TRIAL COUNSEL
JOSEPH R. CARLUCCI, No. 172309
DEPUTY CHIEF TRIAL COUNSEL
SUSAN I. KAGAN, No. 214209
ASSISTANT CHIEF TRIAL COUNSEL
SHERRIE B. McLETCHE, No. 85447
SENIOR TRIAL COUNSEL
ERICA L. M. DENNINGS, No. 145755
SENIOR TRIAL COUNSEL
180 Howard Street
San Francisco, California 94105-1639
Telephone: (415) 538-2285

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:)	Case No. 12-O-10519
)	
FRANK IWAMA,)	
No. 45377,)	NOTICE OF DISCIPLINARY CHARGES
)	
A Member of the State Bar)	

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Frank Iwama ("respondent") was admitted to the practice of law in the State of
4 California on January 15, 1970, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6
7 COUNT ONE

8 Case No. 12-O-10519
9 Rules of Professional Conduct, rule 3-300
[Business Transaction with a Client]

10 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-300, by entering
11 into a business transaction with a client without complying with the requirement[s] that [1] the
12 transaction and its terms were fair and reasonable to the client; [2] the transaction and its terms
13 were fully disclosed and transmitted in writing to the client in a manner which should reasonably
14 have been understood by the client; [3] the client was advised in writing that the client may seek
15 the advice of an independent lawyer of the client's choice; [4] the client was given a reasonable
16 opportunity to seek that advice; and [5] the client thereafter consented in writing to the terms of
17 the transaction, as follows:

18 3. In or about 2009 and 2010, respondent, while representing Donald Lombardi
19 ("Lombardi") in a dispute with the federal government over a lease and in a breach of contract
20 action, obtained three loans from Lombardi, as follows:

- 21 • January 8, 2009 in the amount of \$20,000;
22 • July 1, 2009 in the amount of \$20,000; and
23 • March 11, 2010 in the amount of \$5000.

24 4. For each loan, respondent signed an unsecured promissory note promising to repay
25 the loan within one year of the date of the loan. Respondent also promised to make monthly
26 interest payments prior to the due dates of the loans.

27 5. The terms of the loans were not fair and reasonable to Lombardi.
28

6. At no time prior to obtaining the loans from Lombardi or executing the promissory notes did respondent fully disclose and transmit the terms of the loans in writing to Lombardi in a manner which Lombardi should have understood. At no time prior to any of the loans did respondent advise Lombardi in writing that he may seek the advice of an independent lawyer of his choice. At no time prior to any of the loans did respondent give Lombardi a reasonable opportunity to seek the advice of an independent lawyer. At no time did Lombardi consent in writing to the terms of any of the loans.

7. Between February 6 and August 26, 2009, respondent made interest payments totaling \$1,336.

8. Respondent failed to repay the loans within the one year he promised to repay them.

9. By taking the three loans from his client, Lombardi, that were unsecured and not fair and reasonable to Lombardi, by taking the three loans from Lombardi without transmitting the terms of the loans in writing to Lombardi in a manner which Lombardi should have understood, by taking the three loans without advising Lombardi that he may seek an independent lawyer and without giving Lombardi the opportunity to seek an independent lawyer, and by taking the three loans from Lombardi without obtaining Lombardi's informed written consent to the terms of the loans, respondent improperly entered into a business transaction with his client in willful violation of rule 3-300 of the Rules of Professional Conduct.

COUNT TWO

Case No. 12-O-10519
Rules of Professional Conduct, rule 4-100(A)
[Failure to Deposit Client Funds in Trust Account]

10. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to deposit funds received for the benefit of a client in a bank account labelled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

11. Prior to in or about October 2009, Donald Lombardi (“Lombardi”) employed respondent to represent him in a breach of contract action arising out of Lombardi’s sale of a boat, *Donald Lombardi v. Dan Olin* Santa Clara Superior Court Case number 1-09-CV-155912.

1 12. Thereafter, the case was scheduled for mediation.

2 13. On or about October 6, 2010, Lombardi issued a check payable to respondent in the
3 amount of \$2,500 as advanced costs to cover the mediator's fees.

4 14. Respondent was required to deposit the check into his client trust account ("CTA").
5 Respondent failed to deposit the check into his client trust account ("CTA"). Instead, respondent
6 negotiated the check and received the cash.

7 15. By not depositing the \$2,500 for advanced costs into his CTA, Respondent failed to
8 deposit funds received for the benefit of a client in a bank account labeled "Trust Account,"
9 "Client's Funds Account" or words of similar import.

10
11 COUNT THREE

12 Case No. 12-O-10519
13 Business and Professions Code, section 6106
14 [Moral Turpitude-Misappropriation]

15 16. Respondent wilfully violated Business and Professions Code, section 6106, by
16 committing an act involving moral turpitude, dishonesty or corruption, as follows:

17 17. Count Two is hereby incorporated by this reference.

18 18. Respondent cashed the \$2,500 check and thereafter misappropriated the money for
19 his own use and benefit.

20 19. By misappropriating the \$2,500 for his own use and benefit, respondent committed an
21 act involving moral turpitude, dishonesty or corruption.

22 COUNT FOUR

23 Case No. 12-O-10519
24 Rules of Professional Conduct, rule 4-100(B)(4)
25 [Failure to Pay Client Funds Promptly]

26 20. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by
27 failing to pay promptly, as requested by a client, any funds in respondent's possession which the
28 client is entitled to receive, as follows:

21. Count Two is hereby incorporated by this reference.

1 22. On or about November 23, 2010, the mediation was cancelled due to Olia's failure to
2 appear. The mediator informed respondent and Lombardi that he would not charge them any
3 fees.

4 23. At no time did respondent refund any advanced costs paid by Lombardi for
5 mediation.

6 24. On or about December 2, 2010, Lombardi sent an e-mail to respondent requesting the
7 return of the \$2,500. Respondent received the message, but failed to return any portion of the
8 \$2,500.

9 25. On or about January 7 and 12, 2011, Lombardi sent letters to respondent requesting
10 the return of the \$2,500. Respondent received the letters, but failed to return any portion of the
11 \$2,500.

12 26. On or about January 23, 2011, respondent issued a check to Lombardi in the amount
13 of \$1,000.

14 27. On or about January 23, 2011, respondent paid \$900 toward repayment of the \$2,500.

15 28. On or about December 11, 2011, Lombardi requested that respondent pay him the
16 \$600 still owed for the \$2,500 costs. Respondent received the request, but failed to pay the
17 \$600.

18 29. On or about February 17, 2012, Lombardi filed a complaint against respondent with
19 the State Bar.

20 30. On or about February 24, 2012, a State Bar investigator sent a letter to respondent
21 regarding Lombardi's complaint. Respondent received the letter shortly after it was sent.

22 31. On or about March 19, 2012, respondent sent Lombardi a check for \$600,
23 representing the balance of the funds owed to Lombardi for the mediation fees.

24 32. By not returning the entire \$2,500 Lombardi paid for costs for more than a year, and
25 then only after the State Bar became involved, respondent failed to pay promptly as requested by
26 a client any funds in respondent's possession which the client is entitled to receive.

27 //

28 //

1 **NOTICE - INACTIVE ENROLLMENT!**

2 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
3 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
4 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
5 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
6 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
7 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
8 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
9 **RECOMMENDED BY THE COURT.**

10 **NOTICE - COST ASSESSMENT!**

11 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
12 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
13 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
14 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
15 **PROFESSIONS CODE SECTION 6086.10.**

16 Respectfully submitted,

17 THE STATE BAR OF CALIFORNIA
18 OFFICE OF THE CHIEF TRIAL COUNSEL

19 DATED: September 4, 2012

20 By: _____

21 Erica L. M. Dennings
22 Senior Trial Counsel

DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL and U.S. CERTIFIED MAIL

CASE NUMBER(s): 12-O-10519

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at San Francisco, addressed to: (see below)



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 7196 9008 2191 2052 at San Francisco, addressed to: (see below)



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
FRANK IWAMA	556 FATHOM DRIVE, SAN MATEO, CA 94404	Electronic Address	via e-mail to: frankiwama@gmail.com

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: September 4, 2012

SIGNED:


ANNA REA DUNGO
Declarant